

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0635

**State Gross Retail Tax
For Tax Years 1992 through 1996**

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ISSUE

Gross Retail Tax — Temporary Storage Exemption: Items purchased for use outside of Indiana.

Authority: *Miles, Inc. v. Indiana Dept. of State Revenue*, 659 N.E.2d 1158 (Ind.Tax 1995)
IC 6-2.5-2-1; IC 6-2.5-3-1; IC 6-2.5-3-2; IC 6-2.5-3-4; IC 6-2.5-5-1

The taxpayer protests the Department's denial of its claim for refund for Indiana sales tax paid on all miscellaneous supplies temporarily stored in Indiana for subsequent use outside of Indiana.

STATEMENT OF FACTS

Taxpayer operates retail stores specializing in a wide variety of sporting goods. Taxpayer's corporate headquarters is located in Indiana. Taxpayer operates a distribution center located in Indiana (where it stores inventory, fixtures, and supplies for distribution to various stores in and outside of Indiana) and operates retail outlets both in and outside of Indiana. Taxpayer protests the denial of its claim for refund of Indiana sales tax paid to Indiana vendors for items purchased for use outside of Indiana that were temporarily stored in Indiana.

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DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC 6-2.5-5-1. A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC 6-2.5-3-2.

The complementary use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if: (1) the property is delivered into Indiana by or for the purchaser of the property; (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and (3) the property is subsequently transported out of state for use solely outside Indiana. IC 6-2.5-3-2(d).

According to IC 6-2.5-3-4, the storage, use, and consumption of tangible personal property is exempt from use tax if: 1) the property was acquired in a retail transaction in Indiana and the sales tax had been paid; or 2) the property was acquired in a transaction that is exempt from sales tax under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

Taxpayer was assessed tax on purchases from Indiana registered vendors which were shipped to the Indiana distribution center (or picked up by the taxpayer and taken to the distribution center) and then later sent to out-of-state locations as store fixtures and supplies. Taxpayer bases its protest on IC 6-2.5-3-2(a) and (d) arguing that its temporary storage of personal property in Indiana did not give rise to a taxable exercise of ownership because taxpayer's personal property was temporarily retained in Indiana for subsequent use outside of Indiana. As a result, taxpayer argues, the items did not meet the definition of taxable storage under IC 6-2.5-3-1 or IC 6-2.5-3-2 but were exempt under the definition of storage as discussed by the Indiana Tax Court in *Miles, Inc. v. Indiana Dept. of State Revenue*, 659 N.E.2d 1158 (Ind. Tax Ct. 1995).

Taxpayer further argues that sales and use taxes are complementary taxes and that the creation of an exception that treats one tax differently from the other brands the complementary notion a nullity. However, sales tax paid to an Indiana registered vendor may only be refunded if the transaction is exempt under any one of the sections of IC 6-2.5. The temporary storage exception found within IC 6-2.5-3-2(d) is specifically and exclusively applicable to "[a]n excise tax, known as the use tax." IC 6-2.5-3-2.

FINDING

Taxpayer's protest is respectfully denied.